

Amendment No. 2 to HB1548

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AMEND Senate Bill No. 1801

House Bill No. 1548*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 45-6-209, is amended by deleting the word "and" at the end of subsection (b)(5); by deleting the period at the end of subsection (b)(6) and substituting instead a semi-colon and the word "and"; and by adding the following language as a new subdivision to be designated as follows:

(7) The right thumbprint of the pledgor, provided that if taking the right thumbprint is not possible the pawnbroker shall take a fingerprint from the left thumb or another finger and shall identify on the pawn ticket which finger has been used. A thumb or fingerprint taken pursuant to this subpart shall be maintained by the pawnbroker for a period of five (5) years from the date of the pawn transaction.

SECTION 2. Tennessee Code Annotated, Section 45-6-209, is further amended by adding the following new subsections:

(g)

(1) The following procedure shall be employed when a law enforcement officer, as defined in §39-11-106, seeks to obtain a subpoena for the production of a thumbprint taken and maintained pursuant to subsection (b)(7) for the purpose of establishing, investigating or gathering evidence for the prosecution of a criminal offense.

(2) If the officer has reason to believe that a criminal offense has been committed or is being committed and that requiring the production of a thumbprint in the possession of a pawnbroker is necessary to establish who committed or is committing the offense or to aid in the investigation

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and prosecution of the person or persons believed to have committed or believed to be committing the offense, the officer shall prepare an affidavit in accordance with subsection (g)(3).

(3) An affidavit in support of a request to compel the production of a thumbprint from a pawnbroker shall state with particularity the following:

(A) A statement that a specific criminal offense has been committed or is being committed and the nature of such offense;

(B) The articulable reasons why the law enforcement officer believes the production of the thumbprint requested will materially assist in the investigation of the specific offense committed or being committed;

(C) The name and address of the pawnbroker maintaining the thumbprint; and

(D) The nexus between the thumbprint requested and the criminal offense committed or being committed.

(4)

(A) Upon preparing the affidavit, the law enforcement officer shall submit it to either a judge of a court of record or a general sessions judge who serves the officer's county or city of jurisdiction. The judge shall examine the affidavit and may examine the affiants under oath. The judge may grant the request for a subpoena to produce the thumbprint requested if the judge

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finds that the affiants have presented a reasonable basis for
believing that:

(i) A specific criminal offense has been committed
or is being committed;

(ii) Production of the requested thumbprint will
materially assist law enforcement in the establishment or
investigation of such offense;

(iii) There exists a clear and logical nexus between
the thumbprint requested and the offense committed or
being committed; and

(iv) The scope of the request is not unreasonably
broad or the thumbprint unduly burdensome to produce.

(B) If the judge finds that all of the criteria set out in
subdivision (4)(A) do not exist as to the thumbprint requested, the
judge shall deny the request for subpoena.

(5) The affidavit filed in support of any request for the issuance of
a subpoena pursuant to this subsection shall be filed with and maintained
by the court. If a subpoena is issued as the result of such an affidavit,
such affidavit shall be kept under seal by the judge until a copy is
requested by the district attorney general, criminal charges are filed in the
case, or the affidavit is ordered released by a court of record for good
cause.

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(6) A subpoena granted pursuant to this subsection by a judge of a court of record shall issue to any part of the state and shall command the pawnbroker to whom it is directed to produce any thumbprint that is specified in such subpoena to the law enforcement officer and at such reasonable time and place as is designated in the subpoena. A subpoena granted pursuant to this subsection by a judge of a court of general sessions shall in all respects be like a subpoena granted by the judge of a court of record but shall issue only within the county in which such sessions judge has jurisdiction. The court shall prepare or cause to be prepared the subpoena and it shall describe the specific thumbprint requested and set forth the date and manner it is to be delivered to the officer.

(7) If the subpoena is issued by a judge of a court of record, it may be served by the officer in any county of the state by personal service, certified mail, return receipt requested, or by any other means with the consent of the person named in the subpoena. If the subpoena is issued by a judge of a general sessions court it shall be served by an officer with jurisdiction in the county of the issuing judge but may be served by personal service, certified mail, return receipt requested, or by any other means with the consent of the person named in the subpoena. The officer shall maintain a copy of the subpoena and endorse thereon the date and manner of service as proof thereof.

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(8) No pawnbroker shall be excused from complying with a subpoena for the production of a thumbprint maintained by such pawnbroker issued pursuant to this subsection on the ground that production of the requested thumbprint may tend to incriminate such pawnbroker. Any pawnbroker claiming such privilege against self incrimination must assert such claim before the court issuing the subpoena promptly and before the time designated for compliance therewith. If the district attorney general thereafter certifies to the court that the interests of justice demands the production of the thumbprint for which the claim of privilege is asserted, then the court shall order the production of such thumbprint and no such pawnbroker shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning the requested thumbprint the pawnbroker was compelled to produce.

(9) No subpoena for the production of a thumbprint as authorized by this subsection shall be directed to, or served upon, any defendant, or his counsel, in a criminal action in this state, any person who is suspected of committing a criminal offense or any person who is the subject of a criminal investigation.

(10) If any pawnbroker, without cause, refuses to produce the requested thumbprint within the time and manner designated for compliance by the issuing judge, the district attorney shall seek a writ of

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attachment from the issuing court to seize the pawnbroker within the state and that pawnbroker may be held in civil contempt and committed to jail therein to remain without bail until willing to comply with the subpoena as the law directs.

(h)

(1) No law enforcement officer or agency shall use any thumb or other print obtained pursuant to subsection (g), for the purpose of racial profiling.

(2)

(A) Any person residing within the jurisdiction of the law enforcement officer or agency alleged to have violated this subsection may petition the chancery or circuit court of such county for injunctive relief under this act. The court in which such a petition is filed shall conduct a show cause hearing to determine if thumb or other prints obtained pursuant to subsection (g) have been used by a law enforcement officer or agency for the purpose of racial profiling.

(B) If the court finds by a preponderance of evidence that a violation of this subsection has occurred, it shall grant an injunction prohibiting such officer or agency from obtaining thumb or other prints pursuant to subsection (g) for the period specified in subdivision (3) of this subsection.

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(C) If the court finds by a preponderance of evidence that a violation of this subsection has not occurred, it shall deny the petition for an injunction.

(3)

(A) A law enforcement officer or agency who violates the provisions of this subsection for the first time shall be enjoined from requesting subpoena's for the production of thumb or other prints pursuant to subsection (g) for a period of six (6) months.

(B) A law enforcement officer or agency who violates the provisions of this subsection for the second time shall be enjoined from requesting subpoena's for the production of thumb or other prints pursuant to subsection (g) for a period of one (1) year.

(C) A law enforcement officer or agency who violates the provisions of this subsection for a third or subsequent time shall be permanently enjoined from requesting subpoena's for the production of thumb or other prints pursuant to subsection (g).

(i)

(1) All pawnshops that are required to take and maintain thumb or other prints pursuant to subsection (b)(7) shall be required to place a sign at least ten inches by fourteen inches (10" X 14") in a prominent location reasonably close in proximity to the place where the pawn transaction will

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occur. Such sign shall contain language in bold type substantially similar to the following:

WARNING! IF YOU CONDUCT A PAWN TRANSACTION AT THIS ESTABLISHMENT YOU WILL BE REQUIRED TO GIVE A THUMBPRINT BEFORE SUCH TRANSACTION MAY BE COMPLETED AND YOUR THUMBPRINT MAY BE OBTAINED AND USED BY THE POLICE.

(2) Any pawnbroker who fails to comply with the provisions of this subsection shall be subject to a civil penalty of one hundred dollars (\$100) and such noncompliance shall be grounds for the suspension of such pawnbroker's license.

(j) Notwithstanding the provisions of § 45-6-218 to the contrary, if a violation of this part is committed on or after July 1, 2001 by an owner or major stockholder and/or managing partner of the pawnshop, and such violation is knowingly committed by the owner, major stockholder or managing partner of the pawnshop, then the sole remedy to suspend or revoke the license of such pawnbroker is for the city or county attorney to file an action so requesting suspension or revocation in the appropriate chancery court.

SECTION 3. Tennessee Code Annotated, Section 45-6-209, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

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(1) Except as provided in subdivision (2), the records required to be entered pursuant to subsection (b)(1)--(b)(6) of this section shall be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid. Further, these records shall be made available for inspection during regular and customary business hours by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located. The thumbprint required to be taken pursuant to subsection (b)(7) shall be maintained by the pawnbroker and may only be released pursuant to a subpoena issued in accordance with subsection (g).

(2) The governing body of the appropriate law enforcement agency may require that licensed pawnbrokers with more than fifty (50) transactions per week electronically transfer the records required to be delivered pursuant to this subsection within forty-eight (48) hours following the day of the such transactions. The appropriate law enforcement agency shall provide computer software at no cost to all pawnshops required to electronically transfer such records. Such software shall enable the pawnbroker's computer system to record and electronically transfer the information required by subsection (b)(1) through (6). All such pawnshops shall:

(A) Use such software to electronically transfer required information to the law enforcement agency; or

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(B) Use software that is able to communicate such information to the law enforcement agency in a computer format acceptable to that agency and compatible with such agency's software.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2001, the public welfare requiring it.